

# 2004 Instructions for Form FTB 3805V

## Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Individuals, Estates, and Trusts

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2001**, and the California Revenue and Taxation Code (R&TC).

### What's New

For taxable years beginning on or after January 1, 2004:

- California has reinstated the Net Operating Loss (NOL) carryover deduction.
- 100% of the NOL may be carried forward for ten years.

The carryover period for an NOL incurred in years:

- beginning before January 1, 2002, has been extended for two years.
- beginning on or after January 1, 2002, and before January 1, 2003, has been extended for one year.

### General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2001. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information regarding California and federal law, please visit our Website at [www.ftb.ca.gov](http://www.ftb.ca.gov) and select "Law and Legislation." Additional information

can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

Note, the instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

For taxable years that began in 2002 and 2003, California suspended the Net Operating Loss (NOL) carryover deduction. Taxpayers continued to compute and carryover an NOL during the suspension period. The deduction for disaster losses was not affected by the NOL suspension rules.

For taxable years beginning on or after January 1, 2002, the NOL carryover computation for the California taxable income of a nonresident or part-year resident is no longer limited by the amount of

net operating loss from all sources. Only your California sourced income and losses are considered in determining if you have a California NOL.

#### Change of Residency to California

For taxable years beginning on or after January 1, 2002, if you have NOL carryovers and were a nonresident of California in prior years, the NOL carryovers must be restated as if you had been a California resident for all prior years.

#### Change of Residency from California

For taxable years beginning on or after January 1, 2002, if you have NOL carryovers and you become a nonresident of California, your NOL carryovers must be restated as if you had been a nonresident of California for all prior years.

**Note:** If your residency status changes from the time you generate the NOL carryover to the time you apply the NOL deduction, you will need to recompute the NOL carryover amount. For further information, get FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency.

The general NOL carryover percentage varies. For taxable years beginning on or after:

**\*Note:** For NOL carryovers suspended during the 2002 and 2003 tax year, the carryover period is extended by two years for losses incurred before January 1, 2002, and by one year for losses incurred after January 1, 2002, and before January 1, 2003.

Type of NOL and Description	Taxable Year NOL Incurred	Carryover %	Carryover* Period
<b>General NOL (GEN)</b> Available as a result of a loss incurred in years after 1986 allowed under R&TC Section 17276. (Does not include losses incurred from activities that qualify as a new business or an eligible small business [described below], an EZ, LARZ, LAMBRA, TTA, disaster loss, or a loss due to Pierce's disease and its vectors).	2004 2002-2003 2000 - 2001 1997-1999 1987-1996	100% 60% 55% 50% None	10 Years 10 Years 10 Years 5 Years None
<b>Disaster Losses (DIS)</b> Casualty losses sustained as the result of a disaster, not reimbursed by insurance or otherwise, and designated by the President of the United States or the Governor of California to warrant assistance. If the loss qualifies under IRC Section 165(i), the taxpayer may elect to deduct the loss from the previous year's income. If special legislation is enacted under the R&TC, 100% of the excess loss may be carried over for up to five years. If any excess loss remains after the five year period, 50% of that remaining loss may be carried over for up to ten additional taxable years for losses incurred in any taxable year beginning before January 1, 2000; 55% for losses incurred in any taxable year beginning on or after January 1, 2000, and before January 1, 2002; 60% for losses incurred in any taxable year beginning on or after January 1, 2002, and before January 1, 2004; or 100% for losses incurred in any taxable year beginning on or after January 1, 2004.	See "Designated Disasters" on next page	100%  See Description	First 5 Years  10 Years Thereafter
<b>New Business NOL (NB)</b> Refer to Franchise Tax Board Legal Ruling 96-5 issued August 19, 1996. Incurred by a trade or business that first commenced in California on or after January 1, 1994. During the first three years of business, 100% of an NOL may be carried over for an extended period, but only to the extent of the net loss from the new business. If a taxpayer's NOL exceeds the net loss from the new business, the excess may be carried over as a general NOL. If a taxpayer acquires assets of an existing trade or business which is doing business in California, the trade or business thereafter conducted by the taxpayer or related persons (IRC Sections 267 or 318) is not a new business if the fair market value (FMV) of the acquired assets exceeds 20% of the FMV of the total assets of the trade or business. If a taxpayer or related person has been engaged in a trade or business in California within the preceding 36 months and thereafter commences an additional trade or business in California, the additional trade or business qualifies as a new business only if the activity is classified under a different division of the Standard Industrial Classification (SIC) Manual, 1987 Edition. Business activities conducted by the taxpayer or related persons wholly outside California are disregarded in determining whether the trade or business conducted within California is a new business. The term "new business" includes any taxpayer engaged in biopharmaceutical activities or other biotechnology activities described in Codes 2833 to 2836 of the SIC Manual, 1987 Edition. It also includes any taxpayer that has not received regulatory approval for any product from the United States Food and Drug Administration. See R&TC Section 24416(g)(7)(A) for more information.	Beginning on or after 1/1/00  Beginning on or after 1/1/94 and before 1/1/00  Year of Business Activity  Year 1 Year 2 Year 3	100%  For the first three years of business  100% 100% 100%	10 Years    8 Years 7 Years 6 Years
<b>Eligible Small Business (ESB)</b> Refer to Franchise Tax Board Legal Ruling 96-5 issued August 19, 1996. Incurred in operating a trade or business activity that has gross receipts, less returns and allowances, of less than \$1 million during the taxable year. 100% of an NOL may be carried over, but only to the extent of the net loss from the eligible small business. If a taxpayer's NOL exceeds the net loss from an eligible small business, the excess may be carried over as a general NOL. Taxpayers should use the same SIC Code tests described in the "New Business NOL," above, to group trade or business activities for the eligible small business NOL.	Beginning on or after 1/1/00  Beginning on or after 1/1/94 and before 1/1/00	100%  100%	10 Years  5 Years
<b>Taxpayer in Title 11 Bankruptcy (T11)</b> NOL incurred from 1987 through 1993 by taxpayers who were under the jurisdiction of the court in Title 11 Bankruptcy proceedings prior to January 1, 1994.	1987-1993	50%	10 Years

- January 1, 2004, 100% of your NOL may be carried forward.
- January 1, 2002, and before January 1, 2004, 60% of your NOL may be carried forward.
- January 1, 2000, and before January 1, 2002, 55% of your NOL may be carried forward.

Also, any NOL incurred in any taxable year beginning on or after January 1, 2000, may be carried forward for 10 years.

**Note:** California R&TC uses the Standard Industrial Classification code (SIC Manual, 1987 Edition) for purposes of the new business and eligible small business NOL.

## A Purpose

Individuals, Estates, or Trusts must use form FTB 3805V to figure the current year NOL and to limit the NOL carryover and disaster loss deductions.

Form FTB 3805V is divided into three parts:

- Part I: Computation of Current Year NOL.
- Part II: Determine Modified Taxable Income (MTI). MTI is the amount of your taxable income that can be offset by your prior years' loss carryover.
- Part III: NOL Carryover and Disaster Loss Carryover Limitations.

Corporations must use form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations.

## B Types of NOLs

**Net Operating Losses and Disaster Losses** — If your deductions for the year exceed your income, you may have an NOL carryover. The California NOL is generally figured the same way as the federal NOL. However, under California law:

- An NOL may be carried over only to future years. No carrybacks are allowed (except for specified disaster losses).
- Carryover periods and percentages vary with the type of California NOL.
- You can elect to carry over 100% of your NOL from an activity within the following areas or zones to offset income earned solely within those areas or zones:
  - 1) Enterprise Zone (EZ). Get FTB 3805Z, Enterprise Zone Business Booklet, for more information.
  - 2) Los Angeles Revitalization Zone (LARZ). Get FTB 3806, Los Angeles Revitalization Zone Business Booklet, for more information.
  - 3) Local Agency Military Base Recovery Area (LAMBRA). Get FTB 3807, Local Agency Military Base Recovery Area Business Booklet, for more information.
  - 4) Targeted Tax Area (TTA). Get FTB 3809, Targeted Tax Area Business Booklet, for more information.
  - 5) Pierce's Disease and its Vectors. Get FTB 3805D, NOL Carryover Computation and Limitations — Pierce's Disease, for more information.

The table on page 1 describes the various types of losses and shows the carryover percentages and periods for each.

Designated Disasters		
Year	Code	Event
2005 2004	25	Southern California flooding, debris flows, and mudslides*
2004	24	San Joaquin County Levee Break
2003	23	San Simeon Earthquake
2003	22	Southern California Fires and other related casualties
2000	21	Napa County earthquake
1999	20	Wildfires and other related casualties*
1999 1998	19	Winter Freeze 98/99
1998	18	El Niño 98
1997 1996	17	Disaster floods 96/97
1996	16	Firestorms in Los Angeles, Orange, and San Diego counties*
1995	15	Storms, flooding, and other related casualties
1994	14	San Luis Obispo fire and other related casualties
1994	13	Los Angeles, Orange, and Ventura County earthquake and other related casualties
1993	12	Storms, floods, and other related casualties
1992	11	Wildfires and other related casualties in Calaveras and Shasta Counties
1992	10	San Bernardino County earthquake and other related casualties
1992	9	Riots, arson, and related casualties in California during April and May
1992	8	Humboldt County earthquake and related casualties
1992	7	Storms, floods, and other related casualties
1991	6	Oakland/Berkeley fire and other related casualties
1990	5	Santa Barbara fires and other related casualties
1989	4	Bay Area earthquake and other related casualties
1987	3	Forest fires, October earthquake, and other related casualties
1986	2	Storms, floods, and other related casualties
1985	1	Forest fires and related casualties occurring in California

\*Carryover period and percentage are limited to the NOL rules. No special legislation has been enacted.

You may elect to claim a disaster loss in the year prior to the year in which the disaster occurred if the President declared the event a disaster eligible for emergency assistance. Get instructions for federal Form 4684, Casualties and Thefts, for information about when the election must be filed.

## C Nonresidents and Part-Year Residents

**Nonresidents:** Complete Part I, Section B, column A and column B. **Part-Year Residents:** Complete Part I, Section B, column A through column E.

**Note:** Nonresidents and Part-Year Residents do not fill out Part I, Section A.

## Specific Line Instructions

### Part I — Current Year NOL

Use Part I to figure your current year NOL, if any, to carry over to future years.

If you have losses from more than one source and/or more than one category, it may be necessary to compute the allowable NOL carryover for each loss separately.

If you do not have a current year NOL, skip Part I and go to Part II.

If you have a current year NOL relating to an EZ (R&TC Section 17276.2), LAMBRA (R&TC

Section 17276.5), or TTA (R&TC Section 17276.6), you must:

- Make the election in a statement attached to the original return to carry over only one of these losses or the loss under R&TC Section 17276 (relating to general NOLs).
- Use the applicable economic development area form to calculate the NOL.

The election is **irrevocable**. Get FTB 3805Z, Enterprise Zone Business Booklet; FTB 3807, Local Agency Military Base Recovery Area Business Booklet; or FTB 3809, Targeted Tax Area Business Booklet, for more information.

## Section A — Individuals, Estates, and Trusts

**Line 3** — Estates or Trusts, enter the amount from your 2004 Form 541, line 20 or Form 109, line 14.

**Line 4 through Line 7** — You may deduct nonbusiness capital losses up to the amount of nonbusiness capital gains. You may not deduct any excess of nonbusiness capital losses over nonbusiness capital gains.

Nonbusiness capital losses and gains are losses and gains from other than a trade or business. These include sales of stock, metals, and other appreciable assets as well as any recognized gain from the sale of your principal residence.

**Note:** Enter your nonbusiness capital gains without regard to any R&TC Section 18152.5 exclusion.

**Line 8** — Enter deductions that are not related to a trade or business and are not related to your employment (such as taxes, medical expenses, alimony, charitable contributions, and your contributions to individual retirement plans). If you do not itemize your deductions, your nonbusiness deductions include the standard deduction. A casualty loss is considered a "business expense" regardless of whether it is connected with a trade or business; do not include it as a nonbusiness deduction.

**Line 9** — Enter income that is not related to a trade or business (such as dividends, pensions, annuities, income from an endowment, or interest earned on investments).

**Line 10 through Line 12** — You may subtract nonbusiness deductions only from nonbusiness income, including any nonbusiness capital gains that remain after deducting nonbusiness capital losses. If your nonbusiness deductions are larger than your nonbusiness income, you may not deduct the excess.

**Line 13 through Line 16** — You may deduct business capital losses only up to the total of business capital gains and any nonbusiness capital gains that remain after deducting nonbusiness capital losses and other nonbusiness deductions.

**Note:** Enter your business capital gains without regard to any R&TC Section 18152.5 exclusion.

**Line 19** — Enter the amount of gain from small business stock that you excluded from gross income under R&TC Section 18152.5 (enter as a positive number).

**Line 25** — Enter the amount of your prior year NOL and disaster loss carryovers from Schedule CA (540 or 540NR) line 21b, line 21d and line 21e, column B or Form 541, line 15a.

**Line 27** — Enter the amounts from line 27 on Part III, line 4, column (d) and column (h). If you have an NOL from more than one source, list each loss separately.

If you have an NOL or disaster loss from prior years (line 25), complete Part II and Part III, to determine the loss carryover to future years.

**Long Form 540NR filers:** Complete Part I, Section B, to determine your California NOL carryover.

## Section B — Nonresidents and Part-Year Residents

**Full-Year Nonresidents:** Complete Part I, Section B, column A and column B. Enter amounts from line 27 to Part III, line 4, column (d) and column (h).

**Part-Year Resident:** Complete Part I, Section B, column A through column E.

Enter the number of days during the year you were a California resident: \_\_\_\_\_.

Enter the number of days during the year you were a nonresident: \_\_\_\_\_.

**Complete column A,** line 1 through line 27 as if you were a California resident for the entire year.

**Line 1** – Enter the amount from Long Form 540NR, line 17.

**Line 2** – Enter the amount from Long Form 540NR, line 18.

**Complete column B,** line 1 through line 27 if you were a nonresident for the entire year.

**Line 1** – Enter the amount from Long Form 540NR, line 21.

**Line 2** – Enter the amount from Schedule CA (540NR), line 47.

**Complete column C and D,** line 1 through line 27 using the dates of transactions. If the dates are unknown because they were not specifically reported to you, then you will need to pro-rate the amounts. For column C, multiply the amount in column A by the number of days you were a resident divided by 366 days. For column D, multiply the amount in column B by the number of days you were a nonresident divided by 366 days.

**Column E, line 27** enter this amount on Part III, line 4, column (d) and column (h).

## Part II — Modified Taxable Income (MTI)

Use this part if:

- You are carrying over an NOL from years prior to 2004.
- You are carrying over a disaster loss from years prior to 2004.
- You have an unused 2004 disaster loss to carry over.

The purpose of this part is to figure your MTI. You must make certain modifications to your taxable income to determine how much you can carry over to next year. Your carryover to next year is the excess of your NOL deduction over your MTI.

Use this part to determine what your 2004 income (loss) was before taking any NOL carryover disaster loss, or disaster loss carryover deductions. This adjusted amount is called your MTI.

**Line 1 – Form 540 filers:** Subtract Form 540, line 18 from Form 540, line 17. If negative, use brackets.

**Form 541 filers:** Subtract Form 541, line 18 from Form 541, line 17. If negative, use brackets.

**Long Form 540NR filers:** Subtract Schedule CA (540NR), line 47 from Schedule CA (540NR), line 44. If negative, use brackets.

**Line 2** – Enter as a positive number the net capital loss deduction from your 2004 Schedule D (540NR), line 9, or Schedule D (541), line 10.

**Long Form 540NR filers:** To figure your MTI, enter your net capital loss from your 2004 Schedule CA (540NR), line 13, column E, determined in accordance with Schedule D (540NR).

**Line 3** – Enter as a positive number the disaster loss carryover deduction from your 2004 Schedule CA (540), line 21b, column B or Form 541, line 15a.

**Long Form 540NR filers:** To figure your MTI, enter the disaster loss carryover deduction amount from your 2004 Schedule CA (540NR), line 21, column E.

**Line 4** – Enter as a positive number the NOL carryover deduction from your 2004 Schedule CA (540), line 21d, column B, or Form 541, line 15a.

**Long Form 540NR filers:** To figure your MTI, enter the disaster loss carryover deduction amount from your 2004 Schedule CA (540NR), line 21, column E.

## Part III — Limitations

**Note:** Keep a copy of this form with your records until you use all losses or they expire. Use this section to:

- Figure the NOL and disaster loss deduction actually taken in 2004 and the total disaster losses and NOL to be carried over to future years.
- Keep track of the expiration and limitations of any unused carryovers.

**Nonresidents or Part-Year Residents:** If you were a nonresident or part-year resident during the year, please see FTB Pub. 1100, Taxation of Nonresidents and Individuals Who Change Residency, Section J, Net Operating Loss, for further details.

**When to use an NOL carryover** – Use your NOLs and the disaster losses in the order the losses were incurred. There is no requirement to deduct NOL carryovers, if allowed, before disaster loss carryovers.

**Line 1** – Enter the MTI from Part II, line 5. This is the maximum NOL carryover deduction you are allowed for 2004. NOL carryover amounts in excess of MTI may be eligible for carryover to 2005. See General Information B, Types of NOLs.

**Line 2**

**Column (a)** – Enter the year(s), earliest first, the loss was incurred.

**Column (b)** – If the loss is due to a disaster, enter the disaster code from the list of designated disasters on page 2.

If the loss is from a new business or eligible small business, enter the SIC Code for the new business or eligible small business from the Standard Industrial Classification Manual. If this is a farming enterprise, enter the agricultural activity code from federal Schedule F.

If the loss is from a pass-through entity, such as a partnership, S corporation, or limited liability company (LLC), enter the California corporation number, the partnership's FEIN, or the LLC's Secretary of State file number from Schedules K-1 (100S, 565, or 568).

**Column (c)** – Enter the type of NOL from the table in General Information, Types of NOL and Description. If using a Pierce's disease or an EDA NOL, get the applicable form for the NOL type.

**Column (d)** – Enter the amount of the initial loss related to the year entered in column (a) on the same line.

**Column (e)** – Enter the amount from your 2003 form FTB 3805V, Part III, column (h). You should

have already reduced by 50% any remaining 1998 disaster loss carryover.

**Column (f)** – Enter the smaller of the amount in column (e) or the balance in column (g). If column (g) of the previous line has been reduced to zero, your remaining NOL carryover may be eligible for carryover to 2005. See General Information B, Types of NOLs.

**Column (g)** – Subtract column (f) from the balance in column (g) of the previous line and enter the result.

**Column (h)** – Subtract the amount in column (f) from the amount in column (e) and enter the result. Any remaining 1999 disaster loss carryover to 2005 must be reduced by 50%.

If you have a current year NOL relating to one of the following areas or zones and need more information:

- EZ (R&TC Section 17276.2), get form FTB 3805Z.
- LAMBRA (R&TC Section 17276.5), get form FTB 3807.
- TTA (R&TC Section 17276.6), get form FTB 3809.

Then, you must:

- Make the election in a statement attached to the original return to carry over only one of these losses or the loss under R&TC Section 17276 (relating to general NOLs).
- Use the applicable economic development area form to calculate the NOL.

This election is irrevocable.

### Current Year NOLs

**Note:** If a disaster loss occurs between the date of the publication and the end of the taxable year, please go to our Website at [www.ftb.ca.gov](http://www.ftb.ca.gov) for an updated version of this form, which will include information for any subsequent disaster loss. Then follow the line 3 instructions.

### Line 3 – Current Year Disaster Loss

Use line 3 to claim your 2004 disaster loss.

**Column (a)** – The year the loss was incurred -2004- is entered.

**Column (b)** – Enter the disaster loss code.

**Column (c)** – The type of NOL -DIS- is entered.

**Column (d)** – Enter your 2004 disaster loss from Part I, line 3b. However, if you elected to claim your 2004 disaster loss on your 2003 return, enter on line 2 the carryover amount from your 2003 form FTB 3805V, Part III, line 6.

**Column (f)** – Enter the smaller of the amount in column (d) or the balance in column (g) of the previous line.

**Column (h)** – Subtract the amount in column (f) from the amount in column (d) and enter the result in column (h).

**Line 4** – If you have a current year NOL from more than one source, list each loss separately.

If you operate one or more new businesses and one or more eligible small businesses, the following rules apply. Determine the amount of the loss attributable to the new business(es) and to the eligible small business(es). Then take the NOL in the following order:

- The new business NOL.
- The eligible small business NOL.
- Any remaining NOL (treat as an NOL under the general rules).

**Line 5 – NOL carryover** – Total the carryover amounts from column (h) that are NOT the result of a disaster loss.